

## Surface Mining Reclamation and Enforcement, Interior

§ 723.14

diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Act due to indifference, lack of diligence, or lack of reasonable care.

(C) *A greater degree of fault than negligence* means reckless, knowing, or intentional conduct.

(iii) In calculating points to be assigned for negligence, the acts of all persons working on the surface coal mining and reclamation site shall be attributed to the person to whom the notice or order was issued, unless that person establishes that they were acts of deliberate sabotage.

(4) *Good faith in attempting to achieve compliance.* (i) The Office shall add points based on the degree of good faith of the person to whom the notice or order was issued in attempting to achieve rapid compliance after notification of the violation. Points shall be assigned as follows:

| DEGREE OF GOOD FAITH    |             |
|-------------------------|-------------|
|                         | Points      |
| Rapid compliance .....  | - 1 to - 10 |
| Normal compliance ..... | 0           |

(ii) The following definitions shall apply under paragraph (b)(4)(i) of this section:

(A) *Rapid compliance* means that the person to whom the notice or order was issued took extraordinary measures to abate the violation in the shortest possible time and that abatement was achieved before the time set for abatement.

(B) *Normal compliance* means the person to whom the notice or order was issued abated the violation within the time given for abatement.

(iii) If the consideration of this criterion is impractical because of the length of the abatement period, the assessment may be made without considering this criterion and may be reassessed after the violation has been abated.

### § 723.14 Determination of amount of penalty.

The Office shall determine the amount of any civil penalty by converting the total number of points assigned under 30 CFR 723.13 to a dollar

amount, according to the following schedule:

| Points   | Dollars |
|----------|---------|
| 1 .....  | 22      |
| 2 .....  | 54      |
| 3 .....  | 76      |
| 4 .....  | 108     |
| 5 .....  | 110     |
| 6 .....  | 132     |
| 7 .....  | 154     |
| 8 .....  | 176     |
| 9 .....  | 198     |
| 10 ..... | 220     |
| 11 ..... | 242     |
| 12 ..... | 264     |
| 13 ..... | 386     |
| 14 ..... | 408     |
| 15 ..... | 430     |
| 16 ..... | 452     |
| 17 ..... | 474     |
| 18 ..... | 496     |
| 19 ..... | 518     |
| 20 ..... | 540     |
| 21 ..... | 562     |
| 22 ..... | 584     |
| 23 ..... | 606     |
| 24 ..... | 628     |
| 25 ..... | 650     |
| 26 ..... | 760     |
| 27 ..... | 970     |
| 28 ..... | 1,080   |
| 29 ..... | 1,090   |
| 30 ..... | 1,100   |
| 31 ..... | 1,210   |
| 32 ..... | 1,320   |
| 33 ..... | 1,430   |
| 34 ..... | 1,540   |
| 35 ..... | 1,650   |
| 36 ..... | 1,760   |
| 37 ..... | 1,870   |
| 38 ..... | 1,980   |
| 39 ..... | 2,090   |
| 40 ..... | 2,200   |
| 41 ..... | 2,310   |
| 42 ..... | 2,420   |
| 43 ..... | 2,530   |
| 44 ..... | 2,640   |
| 45 ..... | 3,750   |
| 46 ..... | 3,860   |
| 47 ..... | 3,970   |
| 48 ..... | 4,080   |
| 49 ..... | 4,190   |
| 50 ..... | 4,300   |
| 51 ..... | 4,410   |
| 52 ..... | 4,520   |
| 53 ..... | 4,630   |
| 54 ..... | 4,740   |
| 55 ..... | 4,850   |
| 56 ..... | 4,960   |
| 57 ..... | 5,070   |
| 58 ..... | 5,180   |
| 59 ..... | 5,290   |
| 60 ..... | 5,400   |
| 61 ..... | 5,510   |
| 62 ..... | 5,620   |
| 63 ..... | 5,730   |
| 64 ..... | 5,840   |
| 65 ..... | 5,950   |
| 66 ..... | 6,060   |
| 67 ..... | 6,170   |
| 68 ..... | 6,280   |
| 69 ..... | 6,390   |
| 70 ..... | 6,500   |

## **§ 723.15**

[45 FR 58783, Sept. 4, 1980, as amended at 62 FR 63276, Nov. 28, 1997; 66 FR 58646, Nov. 21, 2001; 70 FR 70700, Nov. 22, 2005]

### **§ 723.15 Assessment of separate violations for each day.**

(a) The Office may assess separately a civil penalty for each day from the date of issuance of the notice of violation or cessation order to the date set for abatement of the violation. In determining whether to make such an assessment, the Office shall consider the factors listed in 30 CFR 723.13 and may consider the extent to which the person to whom the notice or order was issued gained any economic benefit as a result of a failure to comply. For any violation which continues for two or more days and which is assigned more than 70 points under 30 CFR 723.13(b), the Office shall assess a civil penalty for a minimum of two separate days.

(b) In addition to the civil penalty provided for in paragraph (a), whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order or as subsequently extended pursuant to section 521(a) of the Act, a civil penalty of not less than \$1,025 shall be assessed for each day during which such failure to abate continues, except that:

(1)(i) If suspension of the abatement requirements of the notice or order is ordered in a temporary relief proceeding under section 525(c) of the Act, after a determination that the person to whom the notice or order was issued will suffer irreparable loss or damage from the application of the requirements, the period permitted for abatement shall not end until the date on which the Office of Hearing and Appeals issues a final order with respect to the violation in question; and

(ii) If the person to whom the notice or order was issued initiates review proceedings under section 526 of the Act with respect to the violation, in which the obligations to abate are suspended by the court pursuant to section 526(c) of the Act, the daily assessment of a penalty shall not be made for any period before entry of a final order by the court.

(2) Such penalty for the failure to abate a violation shall not be assessed for more than 30 days for such viola-

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tion. If the permittee has not abated the violation within the 30-day period, the Office shall take appropriate action pursuant to sections 518(e), 518(f), 521(a)(4) or 521(c) of the Act within 30 days to ensure that abatement occurs or to ensure that there will not be a re-occurrence of the failure to abate.

[45 FR 58783, Sept. 4, 1980, as amended at 62 FR 63276, Nov. 28, 1997; 66 FR 58647, Nov. 21, 2001; 70 FR 70700, Nov. 22, 2005]

### **§ 723.16 Waiver of use of formula to determine civil penalty.**

(a) The Director, upon his own initiative or upon written request received within 15 days of issuance of a notice of violation or a cessation order, may waive the use of formula contained in 30 CFR 723.13 to set the civil penalty, if he or she determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. However, the Director shall not waive the use of the formula or reduce the proposed assessment on the basis of an argument that a reduction in the proposed penalty could be used to abate violations of the Act, this chapter, any applicable program, or any condition of any permit or exploration approval. The basis for every waiver shall be fully explained and documented in the records of the case.

(b) If the Director waives the use of the formula, he or she shall use the criteria set forth in 30 CFR 723.13(b) to determine the appropriate penalty. When the Director has elected to waive the use of the formula, he or she shall give a written explanation of the basis for the assessment made to the person to whom the notice or order was issued.

### **§ 723.17 Procedures for assessment of civil penalties.**

(a) Within 15 days of service of a notice or order, the person to whom it was issued may submit written information about the violation to the Office and to the inspector who issued the notice of violation or cessation order. The Office shall consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty.

(b) The Office shall serve a copy of the proposed assessment and of the